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IN THE

Supreme Court of the United States

ABIGAIL NOEL FISHER,
Petitioner,

v.

UNIVERSITY OF TEXAS AT AUSTIN, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF OF BROWN UNIVERSITY, UNIVERSITY OF CHICAGO, COLUMBIA UNIVERSITY, CORNELL UNIVERSITY, DARTMOUTH COLLEGE, DUKE UNIVERSITY, JOHNS HOPKINS UNIVERSITY, MASSACHUSETTS INSTITUTE OF TECHNOLOGY, UNIVERSITY OF PENNSYLVANIA, PRINCETON UNIVERSITY, STANFORD UNIVERSITY, VANDERBILT UNIVERSITY, AND YALE UNIVERSITY IN SUPPORT OF RESPONDENTS

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INTEREST OF AMICI CURIAE[1]

Brown University, University of Chicago, Columbia University, Cornell University, Dartmouth College, Duke University, Johns Hopkins University, Massachusetts Institute of Technology, University of Pennsylvania, Princeton University, Stanford University, Vanderbilt University, and Yale University submit this brief as amici curiae in support of Respondents. Amici have longstanding admissions policies similar to the Harvard Plan that Justice Powell approved in *Regents of University of California v. Bakke*, 438 U.S. 265 (1978), and the University of Michigan Law School plan this Court upheld in *Grutter v. Bollinger*, 539 U.S. 306 (2003). Amici accordingly have substantial experience with admissions policies that consider all aspects of an applicant's background and experience, including in some circumstances the applicant's racial or ethnic background.

Although Amici differ in many ways, they speak with one voice to the profound importance of a diverse student body—including racial diversity—for their educational missions. Amici seek to provide their students with the most rigorous, stimulating, and enriching educational environment, in which ideas are tested and debated from every perspective. They also seek to prepare active citizens and leaders in all fields of human endeavor. Although Amici have highly

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[1] The parties have filed letters consenting to the filing of all amicus briefs. No counsel for a party authored this brief in whole or in part, and no person, other than amici or their counsel, made any monetary contribution to the preparation or submission of this brief.

selective admissions criteria designed to ensure that all of their students will be prepared for demanding coursework and will graduate successfully, they recognized long ago that admissions by purely numerical factors such as grade point averages and standardized test scores would not effectively accomplish their broader educational missions.

Amici therefore examine all aspects of individual applicants to assess potential for both extraordinary achievement and contribution to the university's learning environment. This holistic review is necessary in light of Amici's missions and roles. Each includes undergraduate, graduate, and professional schools. All draw applicants from around the nation and the world. All emphasize collaborative research, teaching, and learning. And all are residentially based communities where learning takes place not just from faculty but also in the broad range of students' interactions with their peers, in the classroom, residence halls, and many other settings.

In Amici's experience, a diverse student body adds significantly to the rigor and depth of students' educational experience. Diversity encourages students to question their own assumptions, to test received truths, and to appreciate the complexity of the modern world. This larger understanding prepares Amici's graduates to be active and engaged citizens wrestling with the pressing challenges of the day, to pursue innovation in every field of discovery, and to expand humanity's learning and accomplishment.

To shape their admissions policies to achieve these goals, Amici have long relied on *Bakke* and *Grutter*.

Importantly, the Court's 2013 decision in *Fisher I* did not disturb the core principles upon which Amici have relied. Amici urge the Court to continue to affirm that a holistic review of individual student applications—with consideration of all of their individual traits—is consistent with narrow tailoring. A decision repudiating this principle could significantly impair Amici's ability to achieve their educational missions. As private institutions, Amici are cognizant that Title VI of the Civil Rights Act of 1964 forbids institutions that receive federal funds from engaging in racial "discrimination," and so their ongoing efforts to attain diverse student bodies could be compromised by new limits this Court might place on state university admissions procedures. Amici accordingly urge the Court to continue to interpret the Constitution, consistent with *Bakke*, *Grutter*, and *Fisher I*, to allow educational institutions to structure admissions programs that take account of race and ethnicity as single factors within a highly individualized, holistic review process.

SUMMARY OF ARGUMENT

This Court held in *Grutter* that diversity in higher education, of which race and ethnicity may be components, is a compelling government interest. This Court also held that the Constitution does not require a university to choose between academic selectivity and diversity, and thus does not require a university to use mechanistic, ostensibly race-neutral admissions plans as its means of obtaining a diverse student body. *Fisher I* did not disturb these essential holdings, and Petitioner here does not challenge them. Under

Grutter and *Fisher I*, universities continue to have a compelling interest in ensuring that their student bodies reflect a robust diversity that enriches the educational experience for all students and also prepares them to be active, capable citizens and leaders in a complex and heterogeneous nation and world.

The admissions decisions made by universities, including judgments regarding the mix of students that will best foster intellectual growth, are inherently educational judgments. Such decisions are fundamental components of a university's academic freedom, protected by the First Amendment. When a university considers which applicants will best contribute to a vibrant learning environment intended to prepare students to live and work in a world in which race remains a salient social factor, it should not ignore the communities from which its students come and into which its students will graduate, whether it be a single state, the nation, or the world.

The holistic review of admissions applications by universities like Amici, which considers many factors including race and ethnicity, is necessary to achieve the compelling interest in a diverse learning environment. The diversity that is needed to ensure a robust, rich academic community on campus simply cannot be achieved through other means. Race-blind approaches to holistic review would ignore a salient aspect of applicants' identities and experiences—disregarding characteristics that, to some applicants, may have played a central role in shaping their goals and achievements. Moreover, mechanical admissions plans, like the Texas 10% Plan, do not offer a realistic

alternative approach. Amici receive far too many applications each year to use admissions criteria based solely on objective measures like SAT scores or grade point averages. Such an approach would not only quickly produce unmanageable numbers of admittees, but also undermine Amici's goals of admitting a student body with a diverse array of talents, interests, backgrounds, and worldviews. For these reasons, the individualized, holistic review of applications, with consideration of race and ethnicity, is necessary to achieve Amici's compelling interests of diversity at Amici's institutions. The Court should continue to interpret the Constitution to permit such approaches to university admissions.

ARGUMENT

I. DIVERSITY REMAINS A COMPELLING INTEREST AND IS ESSENTIAL TO ACHIEVING THE EDUCATIONAL MISSIONS OF AMICI.

A. Under *Fisher I*, Diversity In Higher Education Continues To Be A Compelling Government Interest.

Justice Powell recognized in *Regents of University of California v. Bakke*, 438 U.S. 265 (1978), and this Court held unequivocally in *Grutter v. Bollinger*, 539 U.S. 306, 328 (2003), that universities "ha[ve] a compelling interest in attaining a diverse student body." The Court in *Grutter* underscored that the educational benefits of diversity are "substantial" and "not theoretical but real." *Id.* at 330. This holding remains undisturbed by *Fisher I*, *Fisher v. University*

of Texas at Austin (*Fisher I*), 133 S. Ct. 2411, 2417, 2419 (2013), and Petitioner does not ask this Court to revisit it here. *See, e.g.*, Pet. Br. 25 ("[T]he Court has held that 'the interest in the educational benefits that flow from a diverse student body' permit a university to use racial preferences under limited circumstances."); *see also Fisher I*, 133 S. Ct. at 2419 ("[T]he parties here do not ask the Court to revisit that aspect of *Grutter*'s holding [that diversity is a compelling interest].").

The essential role that diversity plays in enhancing the educational environment of a university is an issue to which Amici can strongly attest. Decades of experience with admissions policies based on the Harvard Plan, *Bakke*, and *Grutter* have demonstrated to Amici that the quality of their students' education is greatly enriched if the student body is diverse in many ways—including in terms of race and ethnicity. "The attainment of a diverse student body ... serves values beyond race alone, including enhanced classroom dialogue and the lessening of racial isolation and stereotypes." *Fisher I*, 133 S. Ct. at 2418. Diversity encourages students to question their assumptions, to understand that wisdom may be found in unexpected voices, and to gain an appreciation of the complexity of today's world. In these ways, diversity serves the unique role of higher education in "preparing students for work and citizenship" and training "our Nation's leaders" for success in a multifaceted society. *Grutter*, 539 U.S. at 331, 332; *cf. Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 783 (2007) ("Diversity ... is a compelling educational goal that a

school district may pursue." (Kennedy, J., concurring in part and concurring in the judgment)).

To ensure that the student body best enhances the educational experience, Amici aim to enroll a diverse group of individuals in each entering class. While the admissions policies of Amici vary somewhat, each institution is firmly committed to individualized, holistic review of the type long approved of by this Court,[2] and not disturbed by *Fisher I*. In deciding which students to admit, Amici consider all aspects of their applicants—both as individuals and also in relation to other potential members of the incoming class. That review is intended to produce a student body that is talented and diverse in many ways, including in intellectual interests, geographic origin, socioeconomic status, background and experience (including race and ethnicity), perspective, and areas of accomplishment.

In pursuing an academically excellent and broadly diverse student body, Amici do not place dispositive weight on objective numerical measures such as GPA

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[2] *See Grutter*, 539 U.S. at 337 (upholding admissions policy because the Law School "engages in a highly individualized, holistic review of each applicant's file"); *Gratz v. Bollinger*, 539 U.S. 244, 271 (2003) (identifying the absence of "individualized consideration" as a constitutional defect in undergraduate admissions procedures); *id.* at 276 (O'Connor, J., concurring) (flaw in undergraduate admissions was a lack of "meaningful individualized review of applicants"); *Bakke*, 438 U.S. at 315 (opinion of Powell, J.) ("The diversity that furthers a compelling state interest encompasses a far broader array of qualifications and characteristics of which racial or ethnic origin is but a single though important element.").

and standardized test scores. Certainly, Amici seek students who have demonstrated the potential to succeed at demanding coursework, but each institution's applicant pool includes many more academically strong candidates than the institution could hope to admit. Even the highest GPA or SAT scores by no means guarantee admission.[3] By the same token, students of all racial and ethnic backgrounds are admitted with GPAs and test scores that are far from perfect. Through this review, in addition to seeking students who are qualified, each institution also looks to compose a student body that is exceptional and diverse in many ways.

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[3] Amici's focus on factors beyond objective, numerical qualifications reflects both their educational philosophies and the strength of their applicant pools. For example, in the most recent admissions year for the class of 2019, one Amicus received over 27,000 applications. More than 11,000 of these applicants had a 4.0 grade point average and nearly 12,500 had scores of 2,100 or higher on the three sections of the SAT. Its application pool included students from more than 9,500 high schools and more than 150 countries around the world. A second Amicus received applications from over 7,000 individuals who were the valedictorians of their graduating classes or had GPAs over 4.0; only seven percent of that group were admitted. That same institution also admitted only ten percent of the approximately 8,000 applicants who scored in the top one percent nationally on the SAT. Another Amicus recently admitted only four percent of applicants in the top ten percent of their high school class where class rank was reported, and declined to admit more than 81 percent of applicants with perfect SAT scores. A fourth Amicus could have filled more than half of its class of admitted students with applicants who had perfect SAT scores. It admitted only nineteen percent of these applicants, comprising only ten percent of the admitted class.

The individualized, holistic review processes employed by Amici are not simply ways of ranking candidates from "strong" to "weak." Rather, these reviews are designed to assemble an exceptional undergraduate community that exposes students to differences of many kinds: backgrounds, ideas, experiences, talents, and aspirations. In service of this goal, each institution seeks, and invites applicants to submit, any relevant information about their experiences, accomplishments, and background to understand how the applicant might contribute to the vitality of the student body.[4]

For Amici, diversity is meant to benefit the student body both inside and outside the classroom. Because Amici are all residential institutions, each strives to create a learning environment in which education occurs both within the classroom and through myriad other student interactions—in residences and dining halls, in performance, artistic, athletic, and recreational spaces, in student organizations and activities, and throughout the campus. Indeed, Amici aim to create an environment in which students learn as much from one another outside as within the classroom. As one university president has explained:

> Princeton ... offers you a once-in-a-lifetime opportunity to connect with men and women

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[4] *See, e.g., 2015-2016 Essay Prompts*, Common Application Blog (Mar. 31, 2015) (inviting students to submit an essay on "a background, identity, interest, or talent that is so meaningful they believe their application would be incomplete without it"), http://blog.commonapp.org/2015/03/31/2015-2016-essay-prompts/.

> whose lives have differed dramatically from your own; who view the world from a different vantage point. Never again will you live with a group of peers that was expressly assembled to expand your horizons and open your eyes to the fascinating richness of the human condition. ... The reason [the Admission Office] took such care in selecting all of you—weighing your many talents, your academic and extracurricular interests, your diverse histories—was to increase the likelihood that your entire educational experience, inside and outside the classroom, is as mind-expanding as possible. When you graduate you will enter a world that is now truly global in perspective, and in which success will require that you have a cosmopolitan attitude. You must be equipped to live and work in not one culture, but in many cultures.

Shirley M. Tilghman, President, Princeton University, *2005 Opening Exercises Greeting and Address* (Sept. 11, 2005), http://www.princeton.edu/president/speeches/20050911.

Amici's admissions policies are based on the principle that, in a free society, inquiry proceeds best when views and goals must withstand examination from the widest possible range of perspectives. Amici's experiences bear this out: A student body that is diverse in many dimensions, including racial and ethnic background, produces enormous educational benefits. Such diversity significantly improves the rigor and quality of students' educational experiences by leading

them to examine and confront themselves and their tenets from many different points of view. It also prepares them for life, work, and leadership in a nation and world that constantly are confronting new challenges.

This diversity benefits society as well, because it fosters the development of citizens and leaders who are creative, collaborative, and able to navigate deftly in dynamic, multicultural environments. Indeed, the university plays a unique and critical role in this respect. In our society, a university educational experience may offer one of the few opportunities for individuals to live and interact on a daily basis with peers from markedly different backgrounds, experiences, and perspectives.

Like this Court, Amici look forward to the day when race is of no consequence in our society. *See Grutter*, 539 U.S. at 343 (anticipating that "25 years from now, the use of racial preferences will no longer be necessary to further the interest" in diversity); *id.* at 346 (Ginsburg, J., concurring) ("one may hope, but not firmly forecast, that over the next generation's span, progress toward nondiscrimination and genuinely equal opportunity will make it safe to sunset affirmative action"). But for now, "the reality is that" "race [does] matter[]." *Parents Involved*, 551 U.S. at 787 (Kennedy, J., concurring in part and concurring in the judgment); *accord Grutter*, 539 U.S. at 332-33. To say that race continues to matter is to acknowledge forthrightly that, for many reasons—including the ubiquitous persistence of segregated schools and communities—race continues to shape the backgrounds, perspectives, and

experiences of many in our society, including Amici's students. *See, e.g., Parents Involved*, 551 U.S. at 798 (Kennedy, J., concurring in part and concurring in the judgment) ("Due to a variety of factors ... neighborhoods in our communities do not reflect the diversity of our Nation as a whole.").

For many students, a university may be the first place in which they are exposed to others whose experiences, opinions, faiths, and backgrounds differ remarkably from their own. Through that exposure, students are encouraged to question their own assumptions and biases and to appreciate the full texture of our society and the world. In Amici's educational judgment, such exposure will hasten the arrival of the day when race no longer matters.

B. Admissions Decisions, Including The Judgment That Diversity Is Essential To The Educational Mission, Are Entitled To Deference From The Courts.

Amici require that students at their institutions be capable of excelling at demanding coursework, but their missions extend beyond that singular goal. They aim to develop active and engaged citizens equipped to handle the problems of a rapidly evolving world—training future city, state, national, and international leaders in every field of endeavor, including the arts, government, science, and business.[5] In order to prepare active

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[5] *See, e.g.*, Yale University, *University Mission Statement* ("Yale seeks to attract a diverse group of exceptionally talented men and women from across the nation and around the world and to

citizens and leaders for participation in a diverse nation and world, Amici must be able to compose an appropriately diverse student body.

This Court has long recognized this facet of the educational mission of universities and the role diversity plays in advancing it. In *Bakke*, for example, Justice Powell explained that "it is not too much to say that the nation's future depends upon leaders trained through wide exposure to the ideas and mores of students as diverse as this Nation of many peoples." 438 U.S. at 313 (internal quotation marks omitted). Similarly, in *Grutter*, this Court held:

> In order to cultivate a set of leaders with legitimacy in the eyes of the citizenry, it is necessary that the path to leadership be visibly open to talented and qualified individuals of every race and ethnicity. All members of our heterogeneous society must have confidence in the openness and integrity of the educational institutions that provide this training.

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educate them for leadership in scholarship, the professions, and society."), http://www.yale.edu/about-yale/mission-statement.html (last visited Oct. 20, 2015); Dartmouth College, *Mission* ("Dartmouth College educates the most promising students and prepares them for a lifetime of learning and of responsible leadership, through a faculty dedicated to teaching and the creation of knowledge."), http://dartmouth.edu/mission-statement (last visited Oct. 20, 2015); Stanford University, *The Founding Grant with Amendments, Legislation, and Court Decrees*, at 24 (1987) (Stanford University's "chief object is the instruction of students with a view to producing leaders and educators in every field of science and industry"), https://wasc.stanford.edu/system/files/FoundingGrant_2.pdf.

539 U.S. at 332; *cf. Brown v. Bd. of Educ. of Topeka*, 347 U.S. 483, 493 (1954) (education is "required in the performance of our most basic public responsibilities" and is the "very foundation of good citizenship").

Grutter recognized that universities train leaders and citizens for a heterogeneous society, and that diversity is vital to that function. To achieve this function, a university must pay some attention to the communities from which its students come and into which its students graduate in pursuing those goals.

This Court has repeatedly emphasized that admission decisions are essentially educational judgments that are protected by the First Amendment and entitled to deference from the courts. "Academic freedom ... long has been viewed as a special concern of the First Amendment." *Bakke*, 438 U.S. at 312 (opinion of Powell, J.). And, at the heart of academic freedom is the judgment of how to shape an incoming class of students. "Part of the business of a university [is] to provide that atmosphere which is most conducive to speculation, experiment, and creation, and this in turn leads to the question of who may be admitted to study." *Fisher I*, 133 S. Ct. at 2418 (quoting *Sweezy v. New Hampshire*, 354 U.S. 234, 263 (1957) (Frankfurter, J., concurring in judgment)) (internal quotation marks omitted) (alteration in original).

The educational benefits of diversity and the degree or kind of diversity necessary to obtain those benefits defy easy calculation. These judgments are necessarily at the core of the expertise of universities and inevitably implicate the First Amendment interests in a university's definition of its own educational mission.

As *Fisher I* acknowledged, "*Grutter* calls for deference to the University's conclusion, based on its experience and expertise, that a diverse student body would serve its educational goals." *Fisher I*, 133 S. Ct. at 2419 (internal quotation marks omitted).

Similarly, only educational institutions have the requisite expertise to make the inherently academic judgment of what kind, quality, or extent of diversity will best enhance the educational experience of its students and allow those students to flourish. *See Grutter*, 539 U.S. at 328 ("[The] educational judgment that such diversity is essential to its educational mission ... [is a] complex educational judgment[] in an area that lies primarily within the expertise of the university."). For this reason, it should be the institutions themselves that evaluate how diversity should be defined within an academic community. *Parents Involved*, 551 U.S. at 792 (Kennedy, J., concurring in part and concurring in the judgment) ("[P]recedent support[s] the proposition that First Amendment interests give universities particular latitude in defining diversity").[6]

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[6] *See also* J. Peter Byrne, *Academic Freedom: A "Special Concern of the First Amendment"*, 99 Yale L.J. 251, 311 (1989) ("[T]he Supreme Court's decisions concerning academic freedom have protected principally and expressly a First Amendment right of the university itself ... largely to be free from government interference in the performance of core educational functions."); *cf. Bd. of Regents of Univ. of Wis. Sys. v. Southworth*, 529 U.S. 217, 232 (2000) ("It is not for the Court to say what is or is not germane to the ideas to be pursued in an institution of higher learning.").

Of course, Amici acknowledge that there are clear boundaries regarding how goals of diversity may be pursued. "A university is not permitted to define diversity as 'some specified percentage of a particular group merely because of its race or ethnic origin.'" *Fisher I*, 133 S. Ct. at 2419 (quoting *Bakke*, 438 U.S. at 307 (opinion of Powell, J.)). Such an approach, effectively a quota system, "would amount to outright racial balancing, which is patently unconstitutional." *Id.* (quoting *Grutter*, 539 U.S. at 330). However, the Court has endorsed the limited use of race and ethnic background to achieve diversity, as reflected in the admissions procedures adopted by Amici and other institutions. "'It is not an interest in simple ethnic diversity, in which a specified percentage of the student body is in effect guaranteed to be members of selected ethnic groups, with the remaining percentage an undifferentiated aggregation of students. The diversity that furthers a compelling state interest encompasses a far broader array of qualifications and characteristics of which racial or ethnic origin is but a single though important factor.'" *Id.* at 2418 (quoting *Bakke*, 438 U.S. at 315 (opinion of Powell, J.)).

When universities such as Amici aim to achieve this multifaceted diversity that has been long-recognized by the Court, they should be accorded deference with respect to how best to define that goal. A constitutional rule that required decisions regarding diversity—for example, determinations about the value of diversity, the types of diversity necessary to advance a university's mission, and the contributions of various degrees of diversity to that mission—to be proven by

surveys or data sets, and then second-guessed in court, would imperil the First Amendment interests of universities. Such a rule would unnecessarily limit a university's ability to rely on the nuanced and expert judgments of its officials, faculty, and administrators in assessing such questions. *Cf. Regents of Univ. of Mich. v. Ewing*, 474 U.S. 214, 225 (1985) ("When judges are asked to review the substance of a genuinely academic decision, ... they should show great respect for the faculty's professional judgment."). A standard that would afford no or little deference to the educational judgments of universities would be contrary to this Court's recognition of the need to limit intrusive judicial inquiry of university decision-making. *See Univ. of Penn. v. EEOC*, 493 U.S. 182, 199 (1990) (noting the "importance of avoiding second-guessing of legitimate academic judgments"); *Ewing*, 474 U.S. at 226 n.12, 227 ("Academic freedom thrives ... on autonomous decisionmaking by the academy itself....").

For this reason, litigation and judicial scrutiny regarding whether a university's goal of diversity may be, or has been, articulated as a "critical mass," "classroom diversity," "qualitative diversity," or something else altogether, *see* Pet. Br. at 27-29, draws courts into matters beyond their expertise. These measures are various ways of articulating academic judgments regarding how a university can best fulfill its academic mission. *Cf. Fisher I*, 133 S. Ct. at 2419 (explaining that under *Grutter*, courts defer to an institution's "educational judgment that such diversity is essential to its educational mission," (quoting *Grutter*, 539 U.S. at 328)); *Bakke*, 438 U.S. at 312

(opinion of Powell, J.) ("The freedom of a university to make its own judgments as to education includes the selection of its student body."). Instead, the focus of strict scrutiny review by the courts should remain where it has been: on the "particular admissions process used for this objective." *Fisher I*, 133 S. Ct. at 2418.

II. THE INDIVIDUALIZED, HOLISTIC EVALUATION OF APPLICATIONS, WITH CONSIDERATION OF RACE, IS CONSISTENT WITH NARROW TAILORING, AS REQUIRED UNDER *FISHER I*.

A. Holistic Review Of Individual Applications Allows Consideration Of How Each Individual Student Can Contribute To The Diversity Of The Student Body.

Under the Court's decision in *Fisher I*, holistic review remains consistent with the narrow tailoring demanded of admissions programs that consider racial and ethnic origin. *Fisher I* instructs that "it remains at all times the University's obligation to demonstrate, and the Judiciary's obligation to determine, that admissions processes 'ensure that each applicant is evaluated as an individual and not in a way that makes an applicant's race or ethnicity the defining feature of his or her application.'" *Fisher I*, 133 S. Ct. at 2420 (quoting *Grutter*, 539 U.S. at 337). This is precisely the goal and operation of the holistic admissions reviews conducted at Amici's institutions.

In an effort to ensure that all applicants are examined on their individual merits, Amici engage in a holistic review that takes into account a wide range of detail regarding each applicant. Amici obtain and review extensive information regarding the characteristics, life experiences, accomplishments, and talents of each applicant, to assess both the applicant's academic potential and the contribution that the applicant may make to the class as a whole. Such an application process should allow—indeed encourage—applicants to provide any information about themselves, including their background, that the applicant thinks is relevant.

Through this review, Amici extensively consider a wide range of race-neutral factors in seeking to compose broadly diverse and excellent student bodies. For example, Amici consider whether the applicant is the first in the family to attend college, whether he or she comes from a disadvantaged background, and whether languages other than English are spoken in the home. Amici also engage in substantial outreach and recruiting efforts aimed at increasing the size and diversity of their applicant pools. Furthermore, Amici have adopted financial aid policies designed to enable a wide variety of admitted students from all backgrounds to attend. These efforts have played an important role in contributing to the diversity, including racial and ethnic diversity, of the student bodies at Amici's institutions.

The admissions review also considers, as one factor among many, the racial and ethnic backgrounds of applicants. No Amicus employs race or ethnicity as a

classification in its admissions policies; no seats in the class are reserved for applicants of any race or ethnic background, nor are applicants of any race or background limited to a certain number of places. Rather, Amici's admissions policies, by considering myriad factors including race and ethnicity, are designed to foster excellence through the admission of a class diverse in multiple dimensions.

In this way, Amici's policies are similar to the Harvard Plan approved by Justice Powell in *Bakke* and this Court in *Grutter*. Many other universities have adopted or reaffirmed similar policies in the wake of *Grutter*. Their review "giv[es] serious consideration to all the ways an applicant might contribute to a diverse educational environment," including "a wide variety of characteristics besides race and ethnicity that contribute to a diverse student body." *Grutter*, 539 U.S. at 337, 339. In light of this commitment to individualized, holistic review, Amici consider race and ethnicity with extraordinary care and in the most limited fashion necessary to contribute meaningfully to the diversity of their student body. This narrow, limited consideration of race and ethnicity is entirely consistent with narrow tailoring.

B. Facially Race-Neutral Approaches To Admissions Do Not Provide Meaningful Alternatives For Institutions Like Amici.

"Race-blind" approaches to admissions decisions do not provide Amici with "workable race-neutral alternatives," *Fisher I*, 133 S. Ct. at 2420. Neither race-blind forms of holistic review of applications, nor

mechanistic admissions plans based on objective or numerical alternatives, could achieve the diversity needed to advance Amici's educational missions.

1. The goals of Amici's holistic review of applications cannot be fully achieved through the use of a "race-blind" version of holistic review. The central purpose of a holistic approach to admissions is to understand each applicant as a multifaceted individual, with unique talents, experiences, and opinions to contribute to the diversity of the student body. It would be wholly antithetical to this approach, and Amici's educational missions, to ignore a facet of an applicant's identity that may, to that individual, play an essential role in shaping his or her narrative and experience.

This Court has recognized that race continues to influence our individual experiences. *See Parents Involved*, 551 U.S. at 787 (Kennedy, J., concurring in part and concurring in the judgment); *accord Grutter*, 539 U.S. at 332-33. In view of that reality, as well as the history and purposes of the Equal Protection Clause, it would be extraordinary to conclude at this time that race is the single characteristic that universities may not consider in any respect whatsoever in composing a student body that is diverse and excellent in many dimensions, not just academically. *Cf. Shaw v. Reno*, 509 U.S. 630, 679 (1993) (Stevens, J., dissenting) ("If it is permissible to draw boundaries to provide adequate representation for rural voters, for union members, for Hasidic Jews, for Polish Americans, or for Republicans, it necessarily follows that it is permissible to do to the same thing for members of the very minority group whose history in

the United States gave birth to the Equal Protection Clause."). Indeed, if an applicant thinks his or her race or ethnicity is relevant to a holistic evaluation—which would hardly be surprising given that race remains a salient social factor—it is difficult to see how a university could blind itself to that factor while also gaining insight into each applicant and building a class that is more than the sum of its parts.

Moreover, a race-blind approach to holistic review would fail to provide the diversity that is necessary to fully achieve Amici's educational missions. Race and ethnicity are unique attributes, and reliance on race-neutral measures alone is an inadequate substitute for individualized, holistic review that takes account of race and ethnicity of the type approved of by *Grutter*.

For example, a race-blind approach to holistic review that used socioeconomic status in lieu of race would not provide an adequate alternative. Such approaches fail to produce the *racial* diversity needed to promote "enhanced classroom dialogue and the lessening of racial isolation and stereotypes," *Fisher I*, 133 S. Ct. at 2418. *See, e.g.*, Martha Minow, *After* Brown: *What Would Martin Luther King Say?*, 12 Lewis & Clark L. Rev. 599, 636 & n.192 (2008) (collecting studies showing that reliance on socioeconomic status as an admissions factor alone cannot produce racial diversity). Indeed, although Amici already consider myriad non-racial applicant characteristics in their efforts to expand the diversity of their applicant pools and student bodies, *see supra* at 19, such efforts have proven to be inadequate by themselves to achieve the kind of diversity that best

advances Amici's missions. This diversity can only be achieved by considering every aspect of each applicant through holistic review, including race.

2. Mechanistic admissions plans, whether based on guaranteed admissions or other "objective" numerical criteria, also do not provide a workable alternative for Amici and other similar institutions. *See Fisher I*, 133 S. Ct. at 2420. Proposals like the Texas 10% Plan are completely impracticable for institutions like Amici. Amici receive applications from far more applicants qualified solely according to objective measures than they could hope to admit. *See supra* n.3. Beyond that, Amici have applicant pools that represent the entire nation and a large number of foreign countries at both the undergraduate and graduate level. In the United States alone, there are more than 24,000 public secondary schools and more than 2,600 private secondary schools in addition to more than 14,000 combined elementary and secondary schools. *See* Thomas D. Snyder & Sally A. Dillow, *Digest of Education Statistics 2013*, 57 tbl. 105.50 (May 2015), http://nces.ed.gov/pubs2015/2015011.pdf. Were each Amicus to guarantee admission to just the top student at each of the nation's secondary schools, that would require admitting many more than 25,000 students. Even if only 20 percent of those students matriculated, a class of 5,000-plus students would easily exceed any one of Amici institution's educational resources.[7] Apart

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[7] For the Fall 2015 Freshman class, for example, Stanford University admitted only 5.0% of the 42,497 applicants who sought admittance; 1,732 students matriculated. Stanford University, *Our Selection Process: Applicant Profile*,

from this mathematical infeasibility, guaranteed admissions policies would raise profound difficulties with respect to international students and at the graduate level. *See Grutter*, 539 U.S. at 340 (noting the United States did not "explain how [percentage] plans could work for graduate and professional schools").

Such an approach would also be at odds with Amici's educational missions. As this Court explained in *Grutter*, guaranteed admissions plans are not desirable race-neutral alternatives for many universities because they "preclude the university from conducting the individualized assessments necessary to assemble a student body that is not just racially diverse, but diverse along all the qualities valued by the university." 539 U.S. at 340. For Amici, the assumption embodied in mechanistic alternatives—*i.e.*, that objective numerical measures are the only or even the best measure of an applicant's potential—is simply incorrect. As Amici have explained, each institution relies on individualized, holistic review designed to assess the qualifications of the whole applicant, as well as how the applicant would contribute to fulfilling the educational mission of the institution.

Therefore, the best way to ensure that the use of race in admissions continues to be narrowly tailored, and to "ensure that each applicant is evaluated as an

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http://admission.stanford.edu/basics/selection/profile.html (last visited Oct. 20, 2015). Similarly, Yale University admitted just 6.3% of the 30,932 applications it received for the Fall 2014 Freshman class; 1,360 students matriculated. *See* Yale University, *Facts and Statistics*, http://oir.yale.edu/sites/default/files/FACTSHEET_(2014-15)_3.pdf (last visited Oct. 20, 2015).

individual," *Fisher I*, 133 S. Ct. at 2420 (quoting *Grutter*, 539 U.S. at 339-40), is to allow universities to continue to engage in a holistic review of applications. This review best accomplishes Amici's educational missions, while treating each applicant as an individual, and evaluating each on the basis of his or her unique accomplishments, talents, and background.

For these reasons, the Court should reaffirm, and in no way retreat from, the central principle of *Grutter*: The holistic review of applications, with consideration of race and ethnicity among many other factors, is a narrowly tailored approach to achieve the compelling interest of diversity in higher education.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted,

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